



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 3, 2004

Mr. Steven D. Monté
Assistant City Attorney
Criminal Law & Police Division
City of Dallas
1400 South Lamar Street #300A
Dallas, Texas 75215-1801

OR2004-1604

Dear Mr. Monté:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 197106.

The City of Dallas Police Department (the "department") received a request for all reports, including service number 330756F, affidavits, search warrants with return and inventory, the name of confidential informant number 1846, and any outstanding warrants involving the named individual for a specified period of time. You claim that the information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that to the extent any additional responsive information exists, we assume you have released it to the requestor. If you have not released any such records, you must do so at this time. *See* Gov't Code §§ 552.301(a), .302; *see also* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible).

¹ We note that in your letter dated December 31, 2003, you have withdrawn your section 552.103 of the Government Code assertion.

We now turn to your arguments with regards to the submitted information. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the doctrine of common-law privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) of no legitimate public interest. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977). This office has determined that information may be withheld from public disclosure under section 552.101 in conjunction with common-law privacy upon a showing of certain "special circumstances." *See Open Records Decision No. 169* (1977). In that decision, public employees demonstrated that their lives would be placed in danger if their addresses were released to the public. *Id.* at 7. This office further noted that the initial determination of credible threats and safety concerns should be made by the governmental body to which a request for disclosure is directed, and this office will determine whether a governmental body has demonstrated the existence of special circumstances on a case-by-case basis. *Id.* We noted, however, that "special circumstances" do not include "a generalized and speculative fear of harassment or retribution." *Id.* at 6.

In this instance, you have submitted a letter from the Lieutenant of Police of the Narcotics Division (the "lieutenant"). In the letter, the lieutenant indicates that it is his belief, based on the amounts of narcotics and money that were seized as a result of information provided by the informant, that the life of the informant "would be jeopardized[.]" Based on our review of the lieutenant's letter and the submitted information, we find that release of the informant's identity would likely place the informant in imminent danger of harm or death. We therefore conclude that special circumstances exist in this instance that require that the informant's identifying information be withheld. *Id.* at 6. Therefore, in accordance with section 552.101 in conjunction with common-law privacy on a showing of "special circumstances," the department must withhold the submitted document that reveals the informant's name.

Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). We understand you to represent that the submitted information pertains to a pending criminal investigation. Based upon this representation and our review of the submitted information, we conclude that the release of the submitted offense report would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Thus, we conclude that the

department may generally withhold the submitted offense report pursuant to section 552.108 of the Government Code.

We note however that section 552.108 does not except basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle*, including a detailed description of the offense. See 531 S.W.2d at 186-87. Thus, the department must release the types of information that are considered to be front page information, even if this information is not actually located on the front page. See Open Records Decision No. 127 (1976) (summarizing types of information made public by *Houston Chronicle*). Although section 552.108(a)(1) authorizes the department to withhold from disclosure the remaining submitted information, the department may choose to release all or part of it that is not otherwise confidential by law. See Gov't Code § 552.007.

In summary, the identity of the confidential informant is excepted from disclosure under section 552.101 in conjunction with common-law privacy. With the exception of basic information, the submitted offense report may be withheld from disclosure under section 552.108.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free,

at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 197106

Enc. Submitted documents

c: Mr. MarQuite' Washington
The Law Office of MarQuite' Washington
350 North St. Paul, Suite 1600, LB 10
Dallas, Texas 75201
(w/o enclosures)